

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
1998 Biennial Regulatory Review –)
Amendment of Parts 2, 25 and 68 of the)
Commission's Rules to Further Streamline)
the Equipment Authorization Process for)
Radio Frequency Equipment, Modify the)
Equipment Authorization Process for)
Telephone Terminal Equipment, Implement)
Mutual Recognition Agreements and Begin)
Implementation of the Global Mobile Personal)
Communications by Satellite (GMPCS))
Arrangements)

GEN Docket No. 98-68

REPLY COMMENTS OF CISCO SYSTEMS, INC.

I. INTRODUCTION

Cisco Systems, Inc. ("Cisco"), by its attorneys, hereby submits these reply comments in the above-referenced proceeding.^{1/} As shown below and in the comments, the Commission can best reduce regulatory burdens on equipment manufacturers by expanding the applicability of the Declaration of Conformity ("DoC") regime and other self-authorization measures.^{2/} As Cisco and others made plain in their comments, the Commission's proposal to permit private sector approval of equipment that remains subject to equipment approval is problematic and

^{1/} See 1998 Biennial Regulatory Review – Amendment of Parts 2, 25 and 68 of the Commission's Rules, *Notice of Proposed Rulemaking*, GEN Docket No. 98-68, FCC 98-62, released May 18, 1998 (the "Notice").

^{2/} See, e.g., Comments of the Information Technology Industry Council at 2-4 ("ITI Comments"); Comments of the Telecommunications Industry Association at 2 ("TIA Comments"). See also Comments of Rockwell International Corporation at 2-3 (advocating the self-certification of equipment) ("Rockwell Comments").

unworkable.^{3/} Indeed, many interested parties suggest significant modifications to the TCB proposal, indicating that the proposed regime is flawed.^{4/}

Nevertheless, if the Commission retains its current equipment authorization requirements, it must maintain responsibility for authorization activities. The Commission must recognize that the only parties urging the Commission to relegate equipment authorization solely to the private sector are testing laboratories, the entities that would benefit most from private sector certification.^{5/} While there is no real benefit to entirely privatizing the equipment authorization process, there are, as Cisco explained in its comments, important reasons why the Commission must continue to certify equipment. Thus, the Commission should reject the proposal to permit authorization by Telecommunications Certification Bodies ("TCBs") and, instead, should expand its current self-approval procedures to other types of regulated equipment.^{6/}

^{3/} See Comments of Cisco Systems, Inc. at 7-10 ("Cisco Comments"); Comments of SEA, Inc. at 3-10 ("SEA Comments"). See also Comments of the United States Department of Commerce, National Institute of Standards and Technology at 1 (indicating that NIST has not received any formal request to establish an accreditation program) ("NIST Comments").

^{4/} See Comments of the American National Standards Institute at 1-2 (discussing possible accreditation problems) ("ANSI Comments"); Comments of Itron, Inc. at 2-3 (listing a "host of concerns" surrounding that Commission's proposal) ("Itron Comments"); Comments of Metricom, Inc. at 4-10 (requesting additional safeguards and qualification requirements) ("Metricom Comments"); Comments of Motorola, Inc. at 3-11 (suggesting modifications to the Commission's proposal) ("Motorola Comments"); SEA Comments at 3-10.

^{5/} See, e.g., Comments of ACIL at 8 ("ACIL Comments"); Comments of Communication Certification Laboratory at 2 ("CCL Comments"); DLS Electronic Systems, Inc. at 4 ("DLS Comments"); Comments of International Certification Services at 3 ("ICS Comments"); Comments of Intertek Testing Services NA Inc. at 8 ("Intertek Comments"); Comments of the United States Council of EMC Laboratories at 5 ("USCEL Comments").

^{6/} In addition, on August 13, Redcom Laboratories, Inc. filed reply comments requesting that the Commission "grandfather" manufacturer test labs currently authorized to
(continued...)

II. THE COMMISSION CAN BEST REDUCE REGULATORY BURDENS BY EXPANDING THE DECLARATION OF CONFORMITY REGIME.

While the TCB proposal would shift authorization activities to the private sector, it would not meaningfully affect the burdens of equipment authorization. Rather, the Commission can best reduce regulatory burdens on equipment manufacturers by expanding the self-approval methods available under the Commission's rules.^{7/}

As ITI explained, the TCB proposal merely redirects the burdens of authorization, but the Commission can reduce the burdens on manufacturers through the DoC method.^{8/} TIA also endorsed the DoC regime, and asked the Commission to "continue a review of products subject to its regulation to identify those mature technologies which have a good track record for compliance or are low-power devices and move them, as appropriate, towards a system of SDOC [Suppliers' Declaration of Conformity]"^{9/} Similarly, Rockwell supports self-certification methods by requesting that manufacturers be permitted to seek and obtain TCB accreditation.^{10/} These parties, like Cisco, recognize the effectiveness of self-certification.

^{6/} (...continued)

perform testing and submit test results to the Commission for equipment under Part 68 without formal ISO/IEC Guide 25 accreditation. *See* Reply Comments of Redcom Laboratories, Inc. at 2-3. The Commission should reject this proposal. Adopting consistent accreditation requirements under ISO/IEC Guide 25 would help ensure that all labs test to the same guidelines, thereby promoting quality and uniformity of results.

^{7/} Cisco Comments at 4-7; ITI Comments at 2-4; TIA Comments at 2-3.

^{8/} ITI Comments at 3 (stating that "the results the FCC desires from a private sector authorization program – speed of authorization, multitude of geographically dispersed locations from which to obtain authorizations, and, the redirection of staff resources to robust enforcement and oversight – will still be achieved, but with a lessening of the burden on manufacturers").

^{9/} TIA Comments at 2-3.

^{10/} Rockwell Comments at 3.

Some parties, however, make unsupported assertions concerning the effectiveness of self-certification methods.^{11/} Citing only trade press articles, these parties contend that the DoC process is subject to abuse and that such abuse must be addressed before the Commission proposes any further relaxation of its certification requirements.^{12/} Curiously, these parties fail to cite any Commission complaint or investigation involving the DoC program.

In fact, the Commission recently had an opportunity to eliminate or limit the availability of the DoC method and instead expanded the applicability of that method to other types of equipment requiring approval.^{13/} In its *Equipment Authorization Order*, the Commission relaxed the equipment authorization requirements for certain Part 15 unintentional radiators and Part 18 consumer ISM (industrial, scientific and medical) equipment from certification or notification to the DoC procedure.^{14/} It seems highly unlikely that the Commission would expand the applicability of an authorization method that is being abused.

Moreover, these allegations are contrary to the experience of Cisco and other parties. ITI, for instance, stated that "the Declaration of Conformity program has met with widespread

^{11/} See ACIL Comments at 9-10; CCL Comments at 6. *But see* Cisco Comments at 6 (stating that Cisco is unaware of any significant violations under the DoC regime); ITI Comments at 3 (stating that the Commission has a successful history with its self-certification programs).

^{12/} See ACIL Comments at 9-10; CCL Comments at 6.

^{13/} See Amendment of Parts 2, 15, 18 and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment, *Report and Order*, ET Docket No. 97-94, released April 16, 1998 ("*Equipment Authorization Order*").

^{14/} *Id.* ¶ 13.

and increasing acceptance in its application . . . without any apparent adverse consequences."^{15/}

This statement is consistent with Cisco's experience under the DoC regime.

ACIL and CCL also fail to make any showing that the DoC regime has reduced compliance with the Commission's equipment authorization requirements compared to the traditional equipment authorization rules. In any event, whatever risks the DoC regime creates are significantly less than those that would result from adopting the proposed TCB rules.^{16/} Given the significant efficiency advantages that will result from the expansion of the DoC regime, it is evident that the Commission should adopt that approach in this proceeding.

III. THE COMMISSION MUST NOT DISPLACE THE CURRENT EQUIPMENT AUTHORIZATION REGIME WITH THE TCB PROPOSAL.

A. The Comments Demonstrate that the TCB Proposal Is Flawed.

The comments are replete with examples of shortcomings in the proposed TCB rules. Indeed, all of the parties that manufacture regulated equipment describe aspects of the rules that must be modified. As a consequence, it is evident that the TCB proposal cannot be adopted at this time.

The range of concern is quite broad. Metricom, for instance, requests additional TCB qualification requirements and enforcement mechanisms, including auditing of TCBs and TCB-approved equipment.^{17/} Motorola requests that the Commission adopt service goals for TCBs

^{15/} ITI Comments at 3.

^{16/} See Cisco Comments at 7-10.

^{17/} Metricom Comments at 4-5, 8-9.

and post-grant sampling of TCB-approved equipment.^{18/} These parties both contend that the Commission's TCB proposal requires modification to protect the public interest.

Similarly, SEA identifies a series of concerns raised by the TCB proposal. For instance, SEA suggests that TCBs will be disinclined to accept test data from manufacturers and, instead, will insist on testing equipment themselves.^{19/} SEA believes the TCB proposal would increase costs to manufacturers, result in slowed processing of applications and delay the deployment of new products.^{20/} Cisco agrees that these results are inconsistent with the Commission's goal of streamlining the equipment authorization process.

The TCB proposal also raises significant procedural issues. The National Institute of Standards and Technology ("NIST") states that it has not received an official request from the Commission to establish the accreditation program referenced in the Notice, as required under current operating procedures.^{21/} Under these operating procedures, the Commission "needs to make a formal request advising NIST as to which level it desires NIST to operate in support of

^{18/} Motorola Comments at 4, 9-10. Specifically, Motorola suggests that the Commission adopt service goals that would seek to have TCBs process 90 percent of applications within 10 working days to promote real competition among TCBs. *Id.* at 4. This suggests that Motorola is not confident that, absent regulation, TCBs would be as efficient as the Commission. If the Commission considers such service goals, it should recognize that quality may be sacrificed in the interest of time.

^{19/} SEA Comments at 5-6.

^{20/} *Id.*

^{21/} NIST Comments at 1.

this rule."^{22/} Moreover, the American National Standards Institute questions whether NIST is authorized to accredit labs under Guide 65, as proposed by the Notice.^{23/}

These comments suggest that implementation of the Commission's TCB proposal will be lengthy and problematic, unlike a transition to the DoC regime. By itself, the number of issues that must be resolved to implement the TCB proposal shows that it would be far preferable to expand the DoC regime.

B. If the Commission Permits Authorization by TCBs, the Commission Must Preserve Its Authority to Grant Equipment Authorizations.

Certification laboratories and their affiliates urge the Commission to remove itself from the authorization process and to rely solely on private certification bodies for authorization.^{24/} The Commission must not take this radical step if it decides to authorize TCBs. There would be no practical benefits to doing so and the risks of eliminating Commission involvement in the authorization process are too great.

At the outset, the Commission must recognize that the benefits of relying entirely on TCBs are illusory, except to prospective TCBs. These prospective TCBs argue that the Commission must withdraw from issuing equipment authorizations to avoid a competitive disadvantage to TCBs. These parties claim that they will be disadvantaged because

^{22/} *Id.*

^{23/} ANSI Comments at 2.

^{24/} See ACIL Comments at 8; Comments of Compliance Engineering Services, Inc. at 2 ("CES Comments"); DLS Comments at 4; ICS Comments at 3; Intertek Comments at 8; USCEL Comments at 5.

authorizations obtained through the Commission may be perceived as more legitimate than those obtained through TCBs.^{25/}

These concerns are simply unfounded. Unlike voluntary quality assurance programs such as ISO 9000, which might confer an advantage on manufacturers that use them, the equipment authorization process is a requirement imposed on manufacturers before they can market. If the Commission adopts the TCB rules, equipment authorizations granted by TCBs will be identical to those granted by the Commission, and will serve the same purpose: granting permission to market the authorized device. It is unlikely that manufacturers will distinguish one method of authorization from another except to the extent that one provider is faster, cheaper or more cooperative than another. The imprimatur of the Commission will not be of decisional significance in this context.

Moreover, as Cisco explained in its comments, there are several reasons why the Commission must continue to provide equipment authorizations.^{26/} First, Commission involvement is necessary to handle applications involving novel or unusual issues because it would be inappropriate for TCBs to consider such applications.^{27/} Second, the Commission's continued participation in the equipment authorization process will create a benchmark for measuring the performance of TCBs. Finally, the continuing provision of equipment authorization by the Commission will improve the quality of services offered by TCBs. For these reasons, the Commission must preserve its authority to authorize equipment.

^{25/} *Id.*

^{26/} Cisco Comments at 10-11.

^{27/} Indeed, to the extent a TCB received such an application, it either would have to consult with the Commission or reject the application, slowing the equipment authorization process.

IV. MUTUAL RECOGNITION AGREEMENTS SHOULD PERMIT MANUFACTURERS MAXIMUM FLEXIBILITY.

As described in its comments, Cisco supports the concept of mutual recognition agreements ("MRAs"). For MRAs to be effective, however, they must permit manufacturers seeking to market equipment abroad maximum flexibility in obtaining necessary authorizations. If MRAs do not reduce the transaction costs associated with equipment authorization, there is no reason to negotiate them.

For instance, if the Commission adopts its TCB proposal, it should ensure that TCBs can grant equipment authorizations for any European country covered by the EC/US MRA once they are accredited by the Commission. As SEA explains, absent blanket accreditation, a U.S. manufacturer "would need either to find a TCB authorized to issue certification for conformance for *all* of the standards in *each* of the countries to which the equipment is to be exported, or to have its equipment type approved by several TCBs, each authorized to grant type approvals for different countries."^{28/} Because obtaining separate accreditation from each country would be a difficult undertaking, it is likely that few, if any, TCBs would obtain accreditation for more than a handful of countries. Separate accreditation would leave manufacturers facing, essentially, the same piecemeal approval process they face today.

The Commission should strive to avoid such inefficient outcomes. Thus, Cisco urges the Commission, in negotiating MRAs, to ensure that U.S. manufacturers have maximum flexibility in obtaining approval for equipment marketed abroad, and to seek provisions that reduce the number of separate approvals required for marketing equipment in multiple countries.

^{28/} SEA Comments at 13-14.

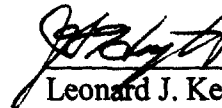
V. CONCLUSION

As demonstrated above, the TCB proposal will benefit only testing laboratories and not manufacturers. Accordingly, instead of adopting the proposed TCB rules, the Commission should expand its application of the DoC regime to additional classes of regulated equipment, including Part 68 terminal devices. To the extent that the Commission retains its authorization requirements for such equipment and adopts TCB rules, the Commission must preserve its authority to grant equipment authorizations.

For all these reasons, Cisco Systems, Inc. respectfully requests that the Commission act in this proceeding in accordance with these reply comments.

Respectfully submitted,

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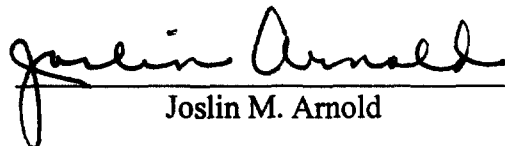
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